

A legislative amendment adopted in 2010 has introduced significant changes to the duty rates for lease agreements. Please find below a summary of the current duty rates payable by the lessor and the lessee, and the relevant exemptions, deadlines and obligations.

Duties payable on the leasing of commercial real estate

Contacts:

Russell W. Lambert
Partner, Service Line Leader
E-mail: russell.w.lambert@hu.pwc.com
Tel: +36 1 461 9223

Gabriella Erdős
Partner
E-mail: gabriella.erdos@hu.pwc.com
Tel: +36 1 461 9130

Paul Grocott
Partner
E-mail: paul.grocott@hu.pwc.com
Tel: +36 1 461 9260

Tamás Lócsei
Partner
E-mail: tamas.locsei@hu.pwc.com
Tel: +36 1 461 9358

János Kelemen
Partner
E-mail: janos.kelemen@hu.pwc.com
Tel: +36 1 461 9310

Zaid Sethi
Partner
E-mail: zaid.sethi@hu.pwc.com
Tel: +36 1 461 9289

Zsolt Szelecki
Partner
E-mail: zsolt.szelecki@hu.pwc.com
Tel: +36 1 461 9733

PricewaterhouseCoopers Kft.
Wesselényi utca 16, Budapest, H-1077
Tel: + 36 1 461 9100
www.pwc.com/hu

This Tax & Legal Alert is produced by PricewaterhouseCoopers' tax department in co-operation with Réti, Antall & Partners, a Law Firm associated with PricewaterhouseCoopers.

Réti, Antall & Partners Law Firm
Wesselényi utca 16/A, Budapest, H-1077
Tel: + 36 1 461 9888
www.pwclegal.com/hu

A legislative amendment adopted in 2010 has introduced significant changes to the duty rates for lease agreements. Please find below a summary of the current duty rates payable by the lessor and the lessee, and the relevant exemptions, deadlines and obligations.

1. Duty rate and due date

The table below shows the duty rates payable by the lessor and the lessee in connection with the leased property for the two types of lease agreements.

2. Open-end lease

In the case of open-end lease agreements,

the lessor must report acquisition of ownership in the property in question by submitting the relevant sales and purchase agreement (SPA) to the Land Registry for duty purposes within 30 days of the date of concluding the SPA.⁵ Lessors who miss this deadline may have to pay a default fine of up to HUF 500,000.⁶

It is important to note that, along with the SPA, the lessor must also submit form no. 11B400, which the Tax Authority has designated for the purpose of reporting the personal data of the acquirer, the discount applied, and the personal data of the seller.⁷ If the submitted form does not contain a tax number, or the number is incomplete, the Land Registry will request

	DUTIES			
	Duty payable by the lessor		Duty payable by the lessee	
	Due date ¹	Duty rate	Due date	Duty rate
Open-end financial lease	On the date the lease agreement is executed	Four percent of that part of the purchase price not exceeding HUF 1 billion and 2% of the portion in excess of that, but not exceeding HUF 200 million per real property ²	At the end of the lease period, after payment of the residual value, when the title is transferred, under the Duties Act then in force (4% of the part of the purchase price not exceeding HUF 1 billion and 2% of the portion in excess of that, but not exceeding HUF 200 million per real property) ³	
Closed-end financial lease	On the date the lease agreement is executed	Two percent of the purchase price ⁴	On the date the lease agreement is executed	Four percent of that part of the purchase price not exceeding HUF 1 billion and 2% of the portion in excess of that, but not exceeding HUF 200 million per real property

¹ Sections 3 (3) a) and 3 (7) of Act XCIII of 1990 on Duties ("the Duties Act").

² Section 19 (1) of the Duties Act.

³ Section 3 (3) d) of the Duties Act.

⁴ Section 23/A (1) of the Duties Act.

⁵ Section 91 (1) of the Duties Act.

⁶ Sections 82 (1) and 172 of the Duties Act.

⁷ Section 21 of the Duties Act.

the reporting person to provide the missing details. If this information is not submitted by the specified deadline, the Land Registry will reject the request.

The lessor will have to pay the duty on the date on which the SPA for the real estate concerned is executed. Although the property transfer duty is payable by the lessor, the acquisition of the real estate is for the purpose of leasing, and the property transfer duty is therefore passed on to the lessee as part of the historical cost.

The Tax Authority will issue a payment order for the duty, and the specified amount will have to be paid within 15 days of the date on which the payment order enters into force. Otherwise the Tax Authority may impose late-payment interest.⁸

If the lessee chooses to exercise the purchase option at the end of the lease period, the lessor will issue a declaration on the transfer of ownership upon payment of the residual value. The lessee will then have to submit the declaration to the Land Registry. The duty will be payable on the date on which the declaration on the transfer of ownership is executed, in accordance with the rules on duties in effect at the time of exercising the purchase option. The lessee will have to pay this amount within 15 days of the date on which the payment order enters into force.

It should be noted that the duty payable by the lessee will be calculated on the basis of the property's market value at the time of acquisition.⁹ In other words, once the lease has expired, the duty will be calculated on the basis of the property's market value at the time of executing the declaration on the transfer of ownership, rather than on the basis of the amount specified in the SPA.

3. Closed-end lease

In the case of closed-end lease agreements, the rate of duty payable by the lessor and the due date of the duty payable by the lessee are different.

Lessors must pay a duty of 2% of the property's market value, provided that they can prove that they qualify as a financial leasing company authorised by the Hungarian Financial Supervisory Authority. Lessors are entitled to apply the preferential duty rate on condition that they declare, by the date on which the payment order enters into force, that they will lease the property under a closed-end lease agreement resulting in a transfer of ownership, within two years of reporting the property for duty purposes.¹⁰

In order to be eligible for the preferential duty rate, the lessor will have to make the declaration by the date on which the payment order enters into force (within 15 days of receipt of the payment order). There are no formal criteria for the declaration. It can be a separate declaration, a supplement to the SPA, or incorporated into the SPA. In any case, the declaration should include a statement that the property will be leased under a closed-end lease agreement resulting in a transfer of ownership at the end of the lease period.

Under the Duties Act in force until 23 January 2009, it was not possible to submit declarations after the expiry of the above deadline, which means that declarations (or requests for waiver of late filing penalties) could only be submitted until the date on which the payment order entered into force. Although the current Duties Act does not contain such a provision (i.e. in principle, failure to meet the deadline for filing a declaration does not preclude the lessor from submitting a request for waiver of late filing penalties), it can be assumed that no declaration may be filed once the deadline has expired. Lessors should therefore declare in the SPA that they hold an authorisation from the Hungarian Financial Supervisory Authority for carrying out financial leasing activities, and that the real estate in question will be leased under a closed-end lease agreement resulting in a transfer of ownership at the end of the lease period. In point 18 of form no. 11B400 (which must be submitted to the Land Registry together with the SPA), lessors must indicate whether they wish to use the preferential duty rate. If they choose to

⁸ Section 78 (1) and (3) of the Duties Act.

⁹ Sections 102 (1) e) and 3 (3) d) of the Duties Act.

¹⁰ Under Section 23/A (1) b) of the Duties Act, the two-year period will commence on the day on which the SPA is submitted to the Land Registry.

apply the preferential rate, they will have to lease the property under an agreement that results in a transfer of ownership at the end of the lease period. Please note that the declaration prescribed by the Duties Act must be submitted regardless of whether or not the use of the preferential duty rate has been indicated on the reporting form.

In addition to the declaration, the lessor must conclude a closed-end lease agreement on the real estate acquired within two years, and submit the agreement to the Land Registry. Since the lessor does not actually have the real properties in inventory, the lease agreement and the SPA are usually signed at the same time.

Once concluded, the closed-end lease agreements will also have to be submitted to the Land Registry¹¹ so that the fact of sale with retention of ownership can be indicated in the title deed of the real estate concerned. The lease agreement must be submitted within two years of the date on which the SPA was filed with the Land Registry, preferably at the same time as the SPA. After the two-year deadline expires, the Tax Authority will automatically verify the conclusion of the closed-end lease agreement on the basis of land registry records. If the fact of sale with retention of ownership is not indicated in the title deed (i.e. there is no proof that the lease has been concluded), and the Tax Authority discovers this discrepancy, the acquirer (lessor) will have to pay an additional fee of up to twice the difference between the duty calculated at the preferential rate and the duty calculated at the non-preferential rate.

In case of a real property with a market value of HUF 200 million, the lessor will have to pay a fee of HUF 8 million, in addition to the preferential duty of HUF 4 million.

The Act on real estate registration currently in effect provides for the suspension of the proceedings for the registration of real property.¹²

The suspension of registration proceedings, and the fact of sale with retention of ownership have a similar effect on updating the Land Registry records. However, in the case of a suspension, the Land Registry may suspend the proceedings for up to six months, and the file number assigned to the application will be entered as a side-note to the title deed. It should be noted that the current Duties Act only recognizes sales subject to retention of ownership as proof, and not the suspension of proceedings, although the two legal institutions have the same effect on land register entries. However, since lease periods are usually longer than six months, the legal institution of suspension of proceedings is irrelevant in practice.

4. Leaseback transactions

Lessees are exempt from the duty on onerous transfers of property for a transitional period beginning on 9 July 2009 and ending on 31 December 2012¹³. This is intended to provide stronger legislative backing to financial transactions. The duties payable by the lessor and the lessee in the case of leaseback transactions are as follows:

	DUTIES			
	Duty payable by the lessor		Duty payable by the lessee	
	Due date ¹⁴	Duty rate	Due date	Duty rate
Leaseback	On the date the lease agreement is executed	Two percent of the purchase price ¹⁵	exempt ¹⁶	

¹¹ In accordance with the formal requirements specified in the Act on the registration of real estate.

¹² Section 47/A of Act CXLI of 1997.

¹³ Section 213 (5) of Act LXXVII of 2009, in accordance with Section 147 (39) of Act CXVI of 2007.

¹⁴ Sections 3 (3) a) and 3 (7) of Act XCIII of 1990 on Duties ("the Duties Act").

¹⁵ Section 23/A (1) b) of the Duties Act.

¹⁶ Section 213 (5) of Act LXXVII of 2009, in accordance with Section 147 (39) of Act CXVI of 2007.

If the duty payment liability arises during the above period, i.e. the SPA is filed with the Land Registry by the deadline, the lessee will be exempted from the duty on onerous acquisition of property. Furthermore, the lessor must meet the 30-day reporting deadline, i.e. the SPA must be submitted to the Land Registry within 30 days of the date of concluding the SPA.

As with closed-end lease transactions, the lessor must provide proof that the real

estate will be leased under a lease agreement that results in a transfer of ownership at the end of the lease period. The fact of sale with retention of ownership must be registered within two years of the date on which the SPA is filed with the Land Registry. The lessor will only be eligible for the preferential (2%) duty rate if the above conditions are met. Please note that form no. 11B400 must be submitted, irrespective of the lessee's exemption.

Dr. Andrea Égertz
attorney-at-law,
Réti, Antall and Partners Law Firm
H-1077 Budapest, Wesselényi u. 16.
Phone: +36 1 461 9580

Tax & Legal Alert

Hungary • Issue 453 • 23 May 2011

Legal Disclaimer: This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers Kft. and Réti, Antall & Partners Law Firm, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

If you no longer wish to receive Tax & Legal Alert, please write to the following e-mail address:
tax.alert@hu.pwc.com

© 2011 PricewaterhouseCoopers Kft. All rights reserved. In this document, "PwC" refers to PricewaterhouseCoopers Kft., which is a member firm of PricewaterhouseCoopers International Limited, each member firm of which is a separate legal entity.

